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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 JOSEPH PINKHAM,

12 Plaintiff,

13 v.

14 STATE FARM MUTUAL AUTOMOBILE  
15 INSURANCE COMPANY,

16 Defendant.

CASE NO. 3:18-cv-05300-RJB

ORDER ON PLAINTIFF'S  
MOTION TO REMAND TO STATE  
COURT

17 THIS MATTER comes before the Court on Plaintiff's Motion to Remand to State Court.  
18 Dkt. 8. The Court has considered the motion, Defendant's Response (Dkt. 9), Plaintiff's Reply  
19 (Dkt. 11), and the remainder of the file herein.

20 Plaintiff seeks remand of this case, which was removed on diversity jurisdiction grounds.  
21 Plaintiff argues that Defendant has failed to meet procedural requirements for timeliness of  
22 removal and that the amount in controversy threshold has not been met. Dkt. 8 at 1. The parties  
23 do not dispute diversity of citizenship. Plaintiff also seeks an award of cost and fees. *Id.*  
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1       **A. Timeliness.**

2           Plaintiff filed the case in Thurston County Superior Court on February 20, 2018. A date  
3 stamp of March 9, 2018, 2pm on the Complaint details the timeframe of “ACCEPTED SOP” by  
4 the Washington Insurance Commissioner. Dkt. 1 at 9. The Notice of Service of Process, a  
5 document generated by Corporation Service Company (CSC), Defendant’s service of process  
6 agent, affirms the March 9, 2018 date of “original” service of process on the Commissioner. Dkt.  
7 10 at 7. The Notice of Service of Process also notes an additional date, March 19, 2018, as the  
8 “Date Served on CSC,” when CSC received service “via certified mail” on Defendant’s behalf.  
9 *Id.* at 1, ¶2; *id.* at 7. “20 days” is noted as the “Answer or Appearance Date” on the Notice of  
10 Service of Process. Defendant removed the case to federal court on April 18, 2018. Dkt. 1 at 3.

11           Defendant is an insurance agency incorporated under the laws of the State of Texas, with  
12 its principal place of business in Illinois. Dkt. 1 at 3.

13           28 U.S.C. § 1446 governs the procedure for the removal of civil actions. By statute, a  
14 “notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt  
15 by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the  
16 claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1).

17           The parties agree that the case was removed on April 18, 2018, but they disagree as to  
18 whether the 30 day clock should run from service of process on the Commissioner, on March 9,  
19 2018, or on CSC, on March 19, 2018. If service of process runs from the former, removal was  
20 untimely.

21           Resolving this issue turns on the sufficiency of the service of process. “The sufficiency of  
22 service of process prior to removal is strictly a state law issue.” *Lee v. City of Beaumont*, 12 F.3d  
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933, 937 (9th Cir. 1993), *overruled on other grounds by Cal. Dep't of Water Resources v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008). Under Washington law:

Each authorized foreign or alien insurer must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the insurer. Service of legal process against the insurer can be had only by service upon the commissioner, except actions upon contractor bonds pursuant to RCW 18.27.040, where service may be upon the department of labor and industries.

RCW 48.050.200(1) (emphasis added).

Applying Washington law, Defendant is undisputedly a foreign insurer, so RCW 48.050.200(1) applies. By statute, service of process “must” be on the Commissioner, which in this case, was on March 9, 2018. The 30 day clock ran from March 9, 2018 and thus elapsed prior to removal on April 18, 2018.

Perhaps anticipating this result, Defendant points to the general “receipt” language in § 1446(b)(1) (“30 days after the receipt by the defendant, by service or otherwise”), arguing that Defendant “received” service of process on March 19, 2018 via certified mail. Dkt. 9 at 3, 4, citing to Dkt. 10 at 7. This argument ignores recent on-point Washington precedent, which controls. The Washington State Supreme Court answered, in the affirmative, the following certified question:

Do RCW 4.28.080(7)(a), RCW 48.02.200, and RCW 48.05.200 establish service through the Washington State Insurance Commissioner as a uniform and exclusive means of service for authorized foreign or alien insurers in Washington State?

*Ohio Sec. Ins. Co. v. Axis Ins. Co.*, 190 Wash. 2d 348, 351, 413 P.3d 1028, 1029 (2018) (emphasis added), certifying *Ohio Sec. Ins. Co. v. Axis Ins. Co.*, No. C15-5698 BHS, at 2 (W.D. Wash. June 20, 2017). In *Axis*, the court rejected the argument made by Defendant in this case, that service of process on a foreign insurer could be sufficient by other means, reasoning that it would “def[y] the plain language of the statute.” *Id.* at 353.

1 Because the 30 day clock ran from the date the Commissioner was served, March 9,  
2 2018, Defendant's removal was untimely. Remand is warranted.

3 **B. Amount in controversy.**

4 Although the case should be remanded, *see above*, Defendant's amount in controversy  
5 showing should be examined, because it in part informs whether costs and fees should be  
6 awarded.

7 In diversity jurisdiction cases, federal jurisdiction must be rejected if there is any doubt as  
8 to the right of removal. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir.1979).  
9 The party seeking removal bears the burden of establishing diversity of citizenship and an  
10 amount in controversy over \$75,000 by a preponderance of the evidence. 28 U.S.C. § 1332(a);  
11 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996). “If it is unclear what  
12 amount of damages the plaintiff has sought . . . then the defendant bears the burden of actually  
13 proving the facts to support jurisdiction, including the jurisdictional amount.” *Gaus*, 980 F.2d at  
14 567. Courts may consider “summary-judgment-type evidence” relevant to the amount in  
15 controversy at the time of removal. *Singer v. State Farm Mutual Auto Ins. Co.*, 116 F.3d 373,  
16 377 (9th Cir. 1997).

17 Defendant estimates approximately \$52,988 in medical bills and \$131,090 in lost wages.  
18 Dkt. 10 at ¶6. This estimate does not include trebled damages or fees. *Id.* at ¶7. Rather than  
19 countering Defendant's estimate, supported by the declaration of Defendant's counsel, Plaintiff  
20 argues that the amount in controversy is less than \$75,000 because Plaintiff's counsel agreed to  
21 settle the case for \$74,999. Dkt. 11 at 2. In support, Plaintiff cites to Exhibit A, a demand letter  
22 by Plaintiff's counsel. The letter states, “my client is willing to accept \$74,999 new money to  
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1 resolve his UIM claim.” Dkt. 11 at 6. However, the letter elsewhere states, “my client’s last  
2 demand was for \$80,000[.]” *Id.*

3 Defendant has met its burden to show an amount in controversy more than \$75,000 with  
4 summary judgment-like evidence. Remand is not warranted based on the amount in controversy.

5 **C. Fees and costs.**

6 “The standard for awarding fees should turn on the reasonableness of the removal.”  
7 *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

8 Although Defendant was legally incorrect about how to calculate the 30 days for  
9 removal, Defendant’s argument was not specious or unreasonable. Defendant’s removal,  
10 including the showing for diversity of citizenship and amount in controversy, was otherwise  
11 legally sufficient. Award of fees and costs is therefore not warranted.

12 \* \* \*

13 THEREFORE, it is HEREBY ORDERED that Plaintiff’s Motion to Remand (Dkt. 8) is  
14 GRANTED IN PART as to the request for remand to state court. The case is HEREBY  
15 REMANDED to state court.

16 The motion is DENIED IN PART as to the request for fees and costs.

17 IT IS SO ORDERED.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing *pro se* at said party’s last known address.

20 Dated this 31<sup>st</sup> day of May, 2018.

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22 ROBERT J. BRYAN  
23 United States District Judge  
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